

REMARKS

This amendment and election is in response to the Office Action, dated April 20, 2006 (“Office Action”). Following entry of the present amendment, claims 1 and 110-203 remain pending; claims 127, 153, 180, 184 and 186 having been amended by virtue of the present amendment. Examination of the pending claims in view of the foregoing amendment and ensuing remarks is respectfully requested.

Claims 127, 153, 180, 184 and 186 have been amended to correct various typographical errata. Claims 166 and 167 were inadvertently omitted in Applicants’ preliminary amendment filed concurrently with the present application, but have been included herein.

In the Office Action, Examiner required election among aspects of the claimed invention depicted in Groups I and II under 35 U.S.C. §121. These Groups included the following:

- I. Claims 1 and 110-165: drawn to methods of delivering a medicant to an abnormal brain region in a mammal; and
- II. Claims 168-203: drawn to a pharmaceutical composition including a calcium-activated potassium channel agonist and a drug or therapeutic cytotoxic agent.

Examiner further required election of a species of medicant in the claimed invention and indicated that, should Applicants elect the species of “cytokine,” then a further species election must be made among TGF- β , TNF- α , and IL-2.

Applicants hereby elect the embodiment of the instant invention described in **Group II** (claims 168-203) for prosecution on the merits. Applicants further hereby elect the species of **cytokine**, and still further elect the cytokine **IL-2**, and submit that claims 168-176, 184, 187, 191 and 200-203 read on this species. Applicants reserve the right to pursue the claims drawn to non-elected embodiments of the present invention in one or more divisional applications.

The foregoing election notwithstanding, Applicants respectfully draw Examiner’s attention to the following:

“Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called upon under 35 U.S.C. § 121 to elect claims to either the product or process . . . However, if applicant elects claims directed to the product, and a product claim is

subsequently found allowable, withdrawn process claims which...include all the limitations of the allowable product claim will be rejoined." (emphasis added) (MPEP § 821.04)

Applicants' independent process claims 1 and 165 (Group I) include each of the limitations of claims 168, 184 and 200 (Group II; *i.e.*, the therapeutic combination of an agonist of a calcium-activated potassium channel and a medicant). Furthermore, Applicants respectfully submit that product claims 168, 184 and 200 are allowable. Therefore, Applicants respectfully submit that the claims of Group I, drawn to a non-elected process for using the product described in claims 168, 184 and 200, and including all of the limitations thereof, must be rejoined in the present application.

All of the claims in the application are believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If for any reason Examiner finds the application other than in condition for allowance, Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 633-6800 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,
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